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|---|-------------|----------------------|---------------------|------------------|
| APPLICATION NO.   | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
| 10/705,273  | 11/10/2003  | Brian J. Brown       | S63.2N-6769-US03    | 4909             |
| 499 7590 02/06/2009<br>VIDAS, ARRETT & STEINKRAUS, P.A.<br>SUITE 400, 6640 SHADY OAK ROAD<br>EDEN PRAIRIE, MN 55344 |             |                      |                     |                  |
| EXAMINER  |             |                      |                     |                  |
| BUL VY Q  |             |                      |                     |                  |
| ART UNIT  |             | PAPER NUMBER         |                     |                  |
| 3773  |             |                      |                     |                  |
| MAIL DATE   |             | DELIVERY MODE        |                     |                  |
| 02/06/2009  |             | PAPER                |                     |                  |

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

## Application No.

10/705,273

## Applicant(s)

BROWN ET AL.

## Examiner

Vy Q. Bui

## Art Unit

3773

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 30 October 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 38-65 is/are pending in the application.
- 4a) Of the above claim(s) 40, 41, 44 and 47-56 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 38, 39, 42, 43, 45, 46 and 57-65 is/are rejected.
- 7) ☒ Claim(s) 64 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

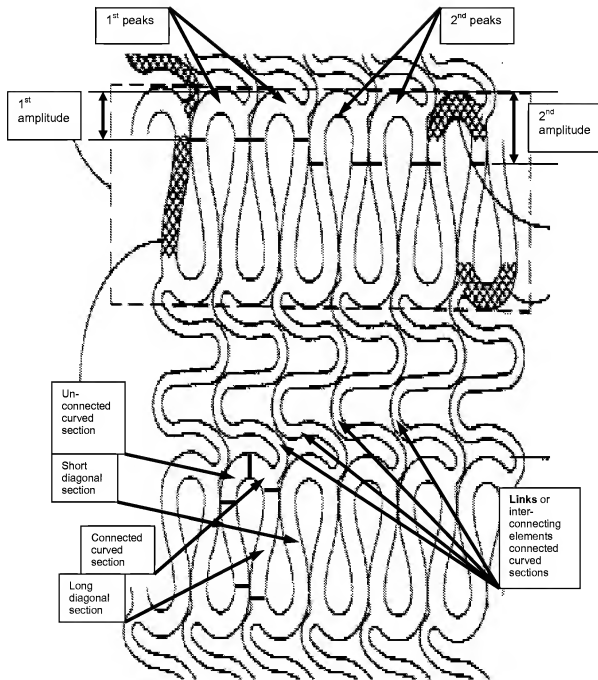
### ***Claim Rejections - 35 USC § 102***

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 38, 42-43, 45, 58-60 and 65 are rejected under 35 U.S.C. 102(e) as being anticipated by Fischell et al-6,190,403.

As to claims 38, 42-43, 45, 58-60 and 65, Fischell-'403 discloses a stent made of a stainless steel. Notice that the limitation "short diagonal section", "long diagonal section", "unconnected curved section", and "connected curved section" in the claims are broadly interpreted. Therefore, partial of Fischell-'403's Fig. 9 reproduced below shows each circumferential set of strut members including links 44 connecting "connected curved sections", short diagonal sections, long diagonal section, unconnected curved sections and connected curved sections to define connected strut members and unconnected strut members substantially as recited in the claims.

Notice that there is nothing in the claims to exclude the interpretation of Fischell-'403's Fig. 9 as presented below. The applicant is expected to amend the claims to distinguish the present claimed invention over Fischell-'403's.



***Claim Rejections - 35 USC § 103***

1. Claims 39, 63 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fischell et al-6,190,403 in view of Kanesaka et al-5,810,872.

As to claims 39 and 63, Fischell-'403 discloses substantially all limitations of the claimed invention, except for a straight link. However, Kanesaka-872 discloses a stent as shown in Fig. 1 having wavy band connecting by substantially straight elements. It would be obvious to one of ordinary skill in the art to provide straight links to a Fischell-'403 stent as straight links are well known links in the stent art.

2. Claim 46 is rejected under 35 U.S.C. 103(a) as being unpatentable over Fischell et al-6,190,403 in view of in view of Anderson et al.-5,800,526.

As to claim 46, Fischell-'403 discloses substantially all limitations of the claimed invention, except for the stent made of a tantalum. However, Anderson-'526 (col. 4. lines 37-40; col. 9, lines 52-61) discloses a stent of tantalum for easy detection under as fluoroscopy process. It would be obvious to one of ordinary skill in the art to make Fischell-'403 from a tantalum material for easy detection under a fluoroscopy process.

3. Claims 57, 61-62 and 64 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fischell et al-6,190,403.

As to claims 57, 61-62 and 64, Fischell-'403 discloses substantially all limitations of the claimed invention, except for some minor modifications as recited in the claims. There is no evident that these modifications will significantly improve the performance of Fischell-'403. Therefore, the claims are not considered as patentable over Fischell-'403.

### ***Claim Objections***

Claim 64 is objected to because of the following informalities: claim 64 is dependent on itself. Appropriate correction is required.

### ***Response to Arguments***

Applicant's arguments with respect to the rejected claims as indicated above have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vy Q. Bui whose telephone number is 571-272-4692. The examiner can normally be reached on Monday-Tuesday and Thursday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jackie Ho can be reached on 571-272-4696. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Vy Q. Bui/  
Primary Examiner, Art Unit 3773